**Kahn Sahib Y. Muhammad Roshan Sahib Bahadur** *(Commissioner of Police):* The Government's position is very clear that any such allegation can be brought to their notice through some representation.

**Mr. T. S. Ramachandra Ayyar** *(Chittur-Tattamangalam):* Have not the Government of Cochin eyes to see.

**Mr. V. K. Bhaskara Menon** *(Cranganur):* Yes.

**Mr. A. Eachara Menon** *(Chittur-Rural):* No.

**Mr. T. S. Ramachandra Ayyar** *(Chittur-Tattamanglam):* Will Government be pleased to note that they are in a fool's paradise. *(Laughter).*

**Mr. P. Kumaran Ezhuthassan** *(Vadakkancheri):* We are not joking. We are very serious.

**Mr. President:** Anything but joking? *(Loud laughter).*

## LEGISLATIVE BUSINESS—GOVERNMENT BILLS

### The Cochin Cattle Trespass Act (Amendment) Bill

**Mr. A. Madhava Prabhu** *(Diwan Peishkar):* I beg to move that the Cochin Cattle Trespass Act Amendment Bill be taken up and finally passed.

**Mr. B. V. K. Menon** *(Joint Secretary to Government):* I second it.

**Mr. A. V. Moothedan** *(Chalakkudi):* I oppose the motion. It has been stated yesterday that what is wanted is that administrative control of the pounds should be vested in the Revenue Officers. That is the object of the Bill though I do not agree with that. The House has accepted that principle. Then the question is whether the present Bill has gone farther than that. What I have to submit is this Bill has conferred judicial powers on a Tahsildar and I shall read to the House Chapter V of the Act. Chapters II, III and IV are the chapters dealing with administrative powers and chapter V with Judicial functions. According to chapter V, Sections 20, 21, 22, and 23 a person whose cattle has been illegally seized can make a complaint to the Magistrate. The Magistrate can hold a judicial enquiry and if it is found that the seizure was illegal can award compensation. That power is now sought to be conferred upon the Tahsildar. We are going back to the premitive times. Formerly we had Tahsildar-Magistrates exercising judicial functions. Now the judicial functions are sought to be given to the Tahsildars. I shall read Section 20 and 21.

"20. Any person whose cattle have been seized under this Act or having been so seized, have been detained in contravention of this Act may, at any time within ten days from the date of the seizure, make a complaint to the District Magistrate, or any Magistrate authorised to receive and try charges without reference by the District Magistrate.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against and make an enquiry into the case".

Therefore this is an effective remedy given to a person whose cattle might have been maliciously or without any lawful reason seized. Now that fundamental right of a citizen is taken away and is placed in an executive officer, a Tahsildar.

**Mr. A. B. Salem** *(Mattancheri):* Are you sure.

**Mr. A. V. Moothedan** *(Chalakkudi):* Why I am sure. I studied the Bill. Yesterday the Government wanted to rush through the Bill, and Government even refused to read it once more. I say this is a fundamental right affecting the rights of a citizen. My cattle may be seized by a friend of mine or an enemy of mine without any cause,and then what is my remedy? I have to go to the Tahsildar—the same officer who is responsible for the administration of the Act. If it is a Magistrate who makes an order when it is illegal we can go to the High Court for remedy. Now all these remedies are shut up. If any person wants to harass me he can seize my cattle. Therefore this is a very unjustifiable amendment, and I am very much against it and at this last stage also I bring this point to the notice of the House.

**Mr. A. B. Salem** *(Mattancheri):* Sir, I understood the amendment to be a substitution of the word "Tahsildar" instead of "Magistrate" and "Diwan Peishkar" instead of District Magistrate, only a verbal alteration; but if it encroaches on the principle that the functions of the executive and judiciary should be kept separate, a principle adopted when Mr. Banerji was our Diwan, then I must say that we cannot aupport this measure. It is for the Advoacte-

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General tc enlighten the House. We thought it was a mere verbal alteration which did not clash with the separation of judicial functions from the executive. The Revenue Department was already administering the Act and will continue to do so. We were told that there will be actually no difference. The words Magistrate and the District Magistrate were substituted so far as administrative control is concerned for Tahsildars and Diwan Peishkar. So far as the judicial functions were concerned we were assured that there was no change. But now we see that the judicial function of a Magistrate is proposed to be given to an executive Officer—that is a serious in-road. In that case we are bound to oppose it. We want the judicial officer to exercise the judicial functions and cannot give such functions to executive officers. By this alteration we are going to annul the principle of judicial independence of the executive. Therefore, we have to oppose this motion. That is the point.

**Mr. C. V. Iyyu** *(Kunnamkulam):* May I know Sir, whether cattle will not come under the interpretation of property, and if a certain person seizes unlawfully the cattle of another is there not any remedy under the Penal Code? By the proposed amendment will this right of the ordinary citizen to complain before a Magistrate be affected?

**Mr. A. Madhava Prabhu** *(Diwan Peishkar):* That cannot be.

**Mr. M. Sivarama Menon** *(Advocate-General):* Sir, I believe this amendment was sought to be made on account of the general trend of the discussion that we had last time. The Hon'ble Member for Planters said that it was very difficult for the villagers in far off places to take their complaints to the Magistrates and ostensibly it was in view of this fact that the powers of the Magistrate was taken away and vested in the Tahsildar. It will be not very easy for these villagers to go to the court for this purpose and the Magistrates may not be able to visit villages often. On the contrary the Tahsildar can hear the complaints in the Village Office and this will help the villagers. If however the House is still of opinion that this power should continue to be vested in the Magistrate Government have no objection. It is not a case where we deliberately wanted to take the powers from the Magistrate and have them vested in the Tahsildar. It was proposed in view of the trend of the discussion as we understood it. If the House is of opinion that the village peopel will have better convenience in placing their complaints before the Magistrate instead of the Tahsildar, the Government will consider the position.

**Mr. C. V. Iyyu** *(Kunnamkulam):* If that is the position taken by the Hon'ble Law Member I would suggest that both the remedies may be taken into consideration. The position explained by the Hon'ble Law Member is perfectly correct. I am also of that opinion. I would even go further and say that the matter may even be entrusted to village courts. Since the decision about compensation is not left to the village court, the ordinary villager will find it more convenient to get compensation through the help of an executive officer like the Tahsildar. I would suggest that as a via media. Both the words the Tahsildar and the Magistrate, may be retained. If a person wants the privilege to prefer a complaint before a Magistrate that privilege also may be retained.

**Mr. A. B. Salem** *(Mattancheri):* I suggest that the third reading of the Bill may be postponed.

**Mr. A. Madhava Prabhu** *(Diwan Peishkar):* I think there is a misconception This is with regard to the illegal seizures. By whom? By the village officers. Village officers are the pound-keepers. They seize cattle and then impound the cattle in the pounds entrusted to their care. Then supposing they commit these mistakes of wrongful seizures, and other persons come and complain, who are the officers before whom they should prefer the complaint; not before the Magistrates, because the administrative disposal of cattle and all that is vested in the Tahsildar, subject of course to the supervision and the control of the Diwan Peishkar. Therefore, the person to whom they have to come and complain for speedy redress is the Tahsildar. They, therefore, go to him and say: "My cattle is wrongfully seized." The Tahsildar takes the complaint in writing wherever necessary and calls upon his village officer to explain why this was done, if he has done any wrong, of course he releases the cattle and otherwise he carries on in the way in which he ought to. He is entitled to fine the village officers. It is an administrative function.

**Mr. A. V. Moothedan** *(Chalakkudi):* It is administrative! Is the provision under Chapter V administrative?

**Mr. A. Madhava Prabhu** *(Diwan Peishkar):* Yes.

**Mr. A. B. Salem** *(Mattancheri):* It is the village officer who acts and it is his own superior officer who reviews it. That will not be correct. Therefore, we want some other judicial

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mind to see between the revenue officer acting and the ordinary citizen who has to submit to the act, if he has got any complaint. We do not want the department itself to judge it. Because, however justly the department may decide, however justly the Tahsildar may decide, however justly the Diwas Peishkar may decide, we can turn down and say you are helping your subordinates. We do not want such a statement to be made against the Department. We want a judicial officer to decide, to administer justice between A, B, C and D, and his decision is to be taken. There is a very great principle involved in this matter; justice should be done and it must appear also to be so done and that quickly. But we do not want that a prejudicial statement to be made, and this should be avoided. Therefore, any inroad, however small it may be, upon the system of the separation of the executive from the judiciary, must be avoided. That status that we have attained in the State is so sacrosanct, that we should never make an inroad into that. That is the only objection. Otherwise, it does not matter at all. I would therefore advise the Government that they should prevent the possibility of such things happening

**Mr. A. Madhava Prabhu** *(Diwan Peishkar)*: Sir, I do not mean to oppose the motion for adjournment, if there is the slightest doubt that it is an encroachment upon the rights of the public. My object is to see that wherever it is necessary the Magistrates's powers may be taken and given to revenue officers. If necessary, we shall have an adjournment. As the Hon'ble Member for Kunnamkulam said, there is the general law that whenever a man's property is seized unlawfully, he can complain to the Magistrate.

**Mr. A. B. Salem** *(Mattahcheri)*: Wherever there is a Tahsildar in a Taluk, we have got a Magistrate also. The Tahsildars cannot camp in villages often.

**Mr. C. V. Iyyu** *(Kunnamkulam)*: Tahsildars go to the villages more often than Magistrates. The ryot gets easier justice and speedier method of compensation from a Tahsildar. Of course, by that, I do not mean that the right of appeal of a citizen from the order of the Tahsildar should be taken away.

**Mr. A. Madhava Prabhu** *(Diwan Peishkar)*: If both the provisions have to be retained, we shall have to consider more details.

**Mr. M. Sivarama Menon** *(Advocate-General)*: To make the position clear, may I take it that it is the sense of the House that both the methods may be left open to the people, *i.e.*, to make a complaint either to the Magistrate or to a Tahsildar.

**Mr. V. K. Bhaskara Menon** *(Cranganur)*: No. It is not.

**Mr. C. V. Iyyu** *(Kunnamkulam)*: It is my view.

**Mr. V. K. Bhaskara Menon** *(Cranganur)*: It is the view of the Hon'ble Member for Kunnamkulam, and not our view.

**Mr. President:** The third reading of this Bill will be adjourned.

## The Cochin Anchal Bill

**Mr. B. V. K. Menon** *(Joint Secretary to Government)*: Sir, I move that the Cochin Anchal Bill be taken up and finally passed.

**Mr. M. Sivarama Menon** *(Advocate-General)*: Sir, I second it.

*Motion put and carried*

## The Cochin Municipal Act (Amendment) Bill

**Mr. C. J. Mathew** *(Joint Secretary to Government)*: Sir, I move that the Cochin Municipal Act Amendment Bill be taken up and finally passed.

**Mr. M. Sivarama Menon** *(Advocate-General)*: Sir, I second it.

*Motion put and carried*

## Motion regarding Food Control measures

**Mr. President:** At the time when the discussion on the motion on food control measures was adjourned, my recollection is that the Government had been asked for certain information and I think perhaps it would facilitate the continuance of the discussion if we get the information that they have now.

**Mr. C. J. Mathew** *(Joint Secretary to Government)*: Sir, relating to the activities of the Excise Department in regard to the food control orders, I have the following information to place before the House.

About 580 cases were detected by the Excise Department in 1118 and about 104 in the current year. The cases detected have been entrusted to the Police with the articles seized. The maximum quantity of smuggled articles detected is.....

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